

the tide, and being so entitled to it, all the appurtenant and incidental benefits and advantages thereof accrued to him as its owner; that having, under his contract with the commissioners of Baltimore town, at an enormous expense filled up the grounds and made the wharves in that part of Market space binding on his lot so extended, a right accrued to him in consideration thereof to demand and receive wharfage on those wharves, of which he could not be deprived by these plaintiffs so long as they permitted the canal and wharves to remain.

The plaintiffs having put in a general replication to this answer, a commission was issued and testimony taken and returned, from which it appeared, that at times wharfage had been collected by *Dugan*, and at other times by the city authorities. After the return of the commission with the testimony, the parties filed the following agreement in relation to these three cases.

‘The above bills being cross bills and concerning the same subject matter, it is agreed, that they be all set down for final hearing together; and that the testimony taken or admitted in either case be considered and received as testimony in all of the above cases. That the agreement and compromise with the *McElderrys* made by *The Mayor and City Council* be filed as evidence in the cases; and that further proof after a decree is passed in these cases may be taken by either party before the auditor in order to shew the amount of wharfage received by either party on the wharfage in question.’

13th June, 1831.—BLAND, Chancellor.—These cases standing ready for hearing, and the solicitors of the parties having been fully heard, the cases were, by consent, permitted to stand over with leave to amend the pleadings, which having been made, they were submitted without further argument, whereupon the proceedings were read and considered.

This case might have been as well brought before the court in one as by all three of these bills, since they all alike present the same questions, whether the right to demand and receive wharfage upon these wharves belongs exclusively to *The Mayor and City Council of Baltimore*; or to *Cumberland Dugan*? I shall therefore consolidate the cases and dismiss them as to the heirs of *Thomas McElderry*, deceased, who seem, by their neglect, and by the compromise of the city with some of them, and with others who claim under them, or their ancestor, to have abandoned the case; thus leaving the controversy to be decided between the *City of Baltimore* and *Dugan* alone.